

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1709 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MANUBHAI GANPATRAM DARJI

Versus

KALAVATIBEN D/OF CB MODI  
-----

Appearance:

MR PR THAKKAR for Petitioner

MR MD PANDYA for Respondent No. 1  
-----

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 21/06/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendant - tenant, who was sued

by the respondents - landlords for a decree of eviction on the ground that the tenant was in arrears of rent of more than six months, that the landlords required the suit premises for personal and bonafide requirements, and that the conduct of the tenant amounted to a nuisance to the landlords and to the neighbours within the meaning of section 13[1][c] of the Bombay Rent Act.

2. The trial Court, after appreciating the evidence on record, found that the tenant was in arrears of rent of more than six months, that in view of the nature of the dispute between the parties, the case would not be covered by section 12[3][a], but would fall u/s 12[3][b] of the Bombay Rent Act, but the defendant - tenant had lost the protection of the Court u/s 12[3][b] inasmuch as he has not deposited the amount of arrears in Court on the date of framing of the issues, and has further more not complied with the directions given by the Court as regards the deposit in Court under two separate and distinct interim orders. It is pertinent to note for the record that the claim of the landlords in respect of personal and bonafide requirements and as regards the nuisance created by the tenant, were both not pressed before the trial Court. Thus, no issues were framed in this regard by the trial Court. On these findings, the trial Court passed a decree of eviction against the defendant - tenant.

3. Being aggrieved by the said judgement and decree, the defendant - tenant preferred an appeal u/s 29[2] of the Bombay Rent Act, which came to be dismissed. Hence, the present revision.

4. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely

because another view on the same set of facts may just be possible.

5. It is pertinent to note that although there was a dispute raised by the tenant as regards the standard rent, there was factually no dispute that the tenant was in arrears of more than six months on the date of the suit notice in terms of the contractual rent. This point has been specifically noted by the lower appellate Court, which has observed that the tenant in his deposition at exh.30 has specifically admitted that the rent is due and payable from 1st of June 1974, which is precisely the claim of the landlords in the suit notice, and also in the suit.

5.1 It is also pertinent to note that both the Courts below have found the case not to be covered by section 12[3][a], but u/s 12[3][b] of the Bombay Rent Act, which obviously affords the tenant a wider latitude to protect his possession, so long as he satisfies his obligations under the said provision. In order to protect his possession in a case falling u/s 12[3][b], it is well settled law that the tenant must deposit in Court regularly the amount of contractual rent [if there is no dispute as to standard rent], the standard rent if determined by the Court earlier, or in case of pendency of a standard rent application, the tenant regularly deposits in Court the amount of interim rent as directed by the Court.

5.2 On the facts of the case, both the Courts below have come to a conclusion that the tenant is not entitled to the protection of section 12[3][b] since he has not deposited the amount as per the directions given by the trial Court under two separate interim orders. It may be noted here that the lower appellate Court has referred to these orders as provisional orders. What is obviously intended, is that these orders were provisional only in the sense that it was a provisional determination of standard rent, and not that the order itself was provisional in the sense that it was liable to be varied or modified. It is common ground that both these orders were interim orders, which directed the defendant tenant to make specific payments by specific dates. The first order is dated 31st January 1978, whereby the defendant was directed to deposit the specified amount latest by 14th February 1978. Since this order was not complied with, the defendant was given a further opportunity by the trial Court by passing another order at exh.36 on 8th March 1978, by directing the defendant to deposit the specified amount latest by 22nd March 1978. Even this

second order was not complied with. There is no controversy on fact that these two orders were not complied with and deposits not made as directed.

5.3 Learned counsel for the petitioner - tenant merely contended that the tenant was in economic difficulties and was therefore unable to make the deposit. This is neither here nor there. The law requires that in order to avail of the protection granted by statute, (section 12[3][b] in this case) specific conditions must be met, and in order to meet these conditions, the ability to pay is of no relevance whatsoever.

6. In the premises aforesaid, I find that the judgements and decrees passed by the two Courts below are eminently sustainable and do not require any interference by way of the present revision. This revision is therefore dismissed and rule is discharged with costs.

7. At this stage, learned counsel for the petitioner - tenant prays for some time to vacate the premises. On the facts of the case, it is directed that the decree in question shall not be executed upto 30th September 2000, subject to the tenant filing an undertaking in this Court within 10 days of the present order on usual terms. It is clarified that there shall be no extension of time for the purpose of filing the undertaking. It is clarified that in case of breach of any of the terms and conditions of the undertaking, the time granted to vacate the premises (non-execution of the decree), shall not come in the way of the landlords.

\*\*\*\*\*

parmar\*